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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,908	03/09/2001	Michael Stroble	833970.0002	2601

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EXAMINER
HENLEY III, RAYMOND J

ART UNIT	PAPER NUMBER
1614	5

DATE MAILED: 03/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/801,908	Michael Stroble, et al.
Examiner	**Art Unit**
Ray Henley	1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____.

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-20 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-20 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

19) ☐ Notice of Informal Patent Application (PTO-152)

20) ☐ Other:

CLAIMS 1-20 ARE PRESENTED FOR EXAMINATION

Applicants' Information Disclosure Statement filed March 9, 2001 has been received and entered into the application. As reflected by the attached, completed copy of form PTO-1449, the cited references have been considered.

Claim Rejection - 35 USC § 112, Second Paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) The expression "the edible *weak* base" (emphasis added) does not have antecedent basis.

(2) Claim 20 is directed to a flavoring agent, yet depends from a claim directed to a method.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

I Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Dondi et al. (U.S. Patent No. 5,624,682) who teach a pharmaceutical solution which comprises ketoprofen and a pharmaceutically tolerated base (column 2, lines 10-19) which may be used as an analgesic agent.

II Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Daher (U.S. Patent No. 5,348,745) who teach an aqueous granulating solution which may comprise ketoprofen and sodium bicarbonate (see, for example, the abstract).

Claim Rejection - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

I Claims 1, 5-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dondi et al. (as above).

The differences between the above and applicants' claimed subject matter lies in that the patentees fail to highlight:

(1) the treatment of the specific inflammatory/pain conditions claimed; and

(2) the presently claimed ingredient amounts.

However, to the skilled artisan, the claimed subject matter would have been obvious because:

(1) ketoprofen was a well known antiinflammatory/analgesic agent and to employ such an agent to treat any specific inflammatory/pain condition would have been a matter well within the purview of the skilled artisan;

(2) the determination of the optimum ingredient amounts to employ would have also been a matter well within the purview of the skilled artisan.

II Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daher (as above).

The differences between the above and applicants' claimed subject matter lies in that the patentees fail to highlight:

(1) the treatment of the specific inflammatory/pain conditions claimed;

(2) the presence of a flavoring agent; and

(3) the presently claimed ingredient amounts.

However, to the skilled artisan, the claimed subject matter would have been obvious because:

(1) ketoprofen was a well known antiinflammatory/analgesic agent and to employ such an agent to treat any specific inflammatory/pain condition would have been a matter well within the purview of the skilled artisan;

(2) it was well known to include flavoring agents, e.g., sweetening agents, in composition of the type taught by the patentee, i.e., effervescent tablets to be dissolved in water and then administered, for the purposes of improving the palatability of the resultant solution. The selection of the specific flavoring agent from those known would also been a matter well within the purview of the skilled artisan; and

(3) the determination of the optimum ingredient amounts to employ would have also been a matter well within the purview of the skilled artisan.

Accordingly, for the above reasons, the claims are deemed to be properly rejected and none of the claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is (703) 308-4652.

RAYMOND HENLEY, III
PRIMARY EXAMINER
GROUP 1600

Henley; rjh
March 20, 2002